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COURT OF APPEALS
DIVISION II

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NO. 39546-1-II

STATE OF WASHINGTON

BY Cn
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**IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

CLARK COUNTY WASHINGTON, CITY OF LA CENTER, GM
CAMAS LLC, MACDONALD LIVING TRUST, & RENAISSANCE
HOMES,

Respondents,

v.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS
BOARD, JOHN KARPINSKI, CLARK COUNTY NATURAL
RESOURCES COUNCIL, & FUTUREWISE,

Appellants.

**APPELLANTS KARPINSKI, CCNRC, & FUTUREWISE'S
SUPPLEMENTAL BRIEF**

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I. RESPONSE IN SUPPLEMENT

By Order entered May 17, 2010, the Court requests supplemental briefing related to the assertion in the County's briefing that "the issues on appeal related to parcels BC, CA-1, CB, RB-2, and VB are moot." Appellants offer the following response in supplement to their previous briefing:

Area CA-1—The annexation by the City of Camas of the area referred to throughout these proceedings as Area CA-1 resulted in the Appellants stipulating to reversal of the decision of the Hearings Board being entered by the Clark County Superior Court.¹ Having so stipulated, Appellants perceive that stipulation to have become the law of the case. Thus Appellants do not perceive this area to be encompassed in their petition of appeal. Appellants' opening Brief did contain a heading (at 25) which referenced areas CA-1 and WB collectively. This was error and Appellants intend the argument under that heading to be limited to area WB.

Areas RB-2 & CB—The areas referred to throughout these proceedings as RB-2 and CB were mostly or fully annexed by the City of

¹ See CP 48, Stipulation and Agreed Order entered February 26, 2009.

Ridgefield and the City of Camas, respectively, during the pendency of this case, but unlike Area CA-1, neither was the subject of a stipulation during the appellate proceedings before the Superior Court. The Superior Court's Final Order found the appeal of the Board's decision relating to Area RB-2 to be moot, and remanded it for further proceedings.

Appellants represented to the Superior Court that, as with the annexation of Area CA-1, those portions of Area RB-2 which were annexed by City of Ridgefield now fall within the annexing jurisdiction's territorial boundary. Because a city's UGA is, as a matter of law, required to extend to, at least, the jurisdiction's territorial boundaries,² the *fait accompli* renders the issues related to this area moot. Appellants did not, therefore, intend to seek review related to those areas of RB-2 which were annexed by the City of Ridgefield. Further, Appellants agree that County's subsequent legislative action—Ordinance 2009-12-15—has mooted the issues related to those portions of RB-2 which were not annexed and again did not intend to seek review related to those areas.

With respect to Area CB, Appellants were again be forced to conclude that those portions of Area CB which were annexed by the City

² RCW 36.70A.110(1).

of Camas during the pendency of this case now fall within the annexing jurisdiction's UGA as a matter of law,³ and therefore stipulated to a finding of compliance as to this area before the Hearings Board, do not perceive them to be encompassed in the instant appeal, and did not include argument related thereto in their briefing.

Areas BC & VB—The Appellants cannot agree that the issues related to BC & VB are correctly characterized as moot. Appellants prevailed in their argument to the Board related to these Areas⁴ and the Superior Court upheld the Board's decision related to these areas.⁵ Having thus twice prevailed, Appellants did not seek review of these holdings.

Finally, Appellants took the County's briefing related to the above areas as exposition of the case, rather than explicit argument, and while not agreeing with the "mootness" characterization in all respects, agreed with the County's ultimate proposition that these areas are not before the Court because they were not encompassed in the present appeal.

³ *Id.*

⁴ *Karpinski v. Clark County*, WWGMHB Case No. 07-2-0027, Final Decision and Order Amended for Clerical and Grammatical Errors (June 3, 2008) at 69, 58, respectively.

⁵ CP 55, Memorandum of Decision, May 20, 2009, at 8. Note the list of reversals omits areas BC and VB.

Undersigned counsel for Appellants appreciates, alas only in retrospect, that by providing an explanation to this effect in Appellants' Reply Brief he might have better served the Court in the efficient resolution of this case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert A. Beatley", with a long horizontal flourish extending to the right.

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 25th day of May 2010 he caused the following documents to be served on the following parties by regular U.S. Mail, postage prepaid: Supplemental Brief of Appellants Karpinski, CCNRC, & Futurewise.

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Dated: 25 May 2010.

A handwritten signature in black ink, reading "Robert A. Beattey", with a long horizontal flourish extending to the right.

Robert A. Beattey